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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,864	03/18/2004	Christine J. Bodie	015-001	6541
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EXAMINER				
SOOHOO, TONY GLEN				
ART UNIT		PAPER NUMBER		
1797				
MAIL DATE		DELIVERY MODE		
02/20/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/803,864

Applicant(s)

BODIE ET AL.

Examiner

Tony G. Soohoo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 5, 7, 9, 12, 14-22, 27, 28, 40 and 42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 5, 7, 9, 12 and 14-22 is/are allowed.
- 6) ☒ Claim(s) 23, 24, 26, 39, 45 is/are rejected.
- 7) ☒ Claim(s) 27, 28, 40 and 42 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsman's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 39 and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Ferrara 3570192.
3. Ferrara teaches device with a method of operation whereby an eccentric wheel cam 60 is rotated about a vertical axis; the container 12 is secured to a container base 36 and is laterally moved by the wheel through the casing and structure of 162, 160 connected to the container base 36 and container bottom 16. A further tilting of the container is caused by the rotation of the eccentric wheel cam whereby a spring dampener limits the lateral and tilting (vertical) motion, see column 3 line 73 through column 4, line 11. With regards to claim 45 note that upon operation of the device, the lateral and tilt motions would inherently function in the manner recited in the claim.
4. Claims 39 and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Karpenko et al 3286939.
5. Karpenko (et al) teaches device with a method of operation whereby an eccentric wheel journal 29, column 2, line 15-16, is rotated about a vertical axis; the container 18

is secured to a container base 15 and is laterally moved by the eccentric wheel. A further tilting of the container 18 is caused by the rotation of the eccentric wheel cam 29 whereby a elastic dampener 14 limits the lateral and tilting (vertical) motion, see column 2, lines 24-29, through column 4, line 11. With regards to claim 45 note that upon operation of the device, the lateral and tilt motions would inherently function in the manner recited in the claim.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferrara 3570192 in view of Davis 5638628.

The Ferrara reference discloses all of the claimed subject matter as noted above and with the exception of the retaining mechanism including one of an elastic band, or a rubber band. With regards to claim 24, Applicant has defined in the specification [0048] that the retaining means, may include alternate stretchable and recoilable material such as an elastic band, a rubber band, or spring.

L. Retaining Band

[0064] The retaining band 38 can be coupled at one end to the retaining post 36 in a wide variety of ways, including by wrapping the retaining band 38 around the retaining post 36. The retaining band 38 can be any stretchable and recoilable material, such as an elastic band, a rubber band, or a spring. The other end of the retaining band 38 is coupled to a retaining bracket 40.

The Ferrara reference discloses a spring 32, 204, and wire cable 2002 fastened to the stationary frame 30, column 8, lines 19 – 44.

In the force exertion art, the elements of a spring, a rubber band, an elastic band are a commonly known class of functional equivalent structures to produce a restorative force. One example of such common knowledge is shown by the discussion of the Davis 5638628 reference to the use of a spring 270, but may be substituted with any structure which can exert a restorative force such as a rubber band, column 6, lines 36-45.

US 5638628

“Although spring 270 is preferably an extension spring, any structure that can exert a force between the spring arm 190 and the spring bracket 260 can be used in its place, such as, for example, a leaf spring, a coil spring, a piston, a torsion bar or even a rubber band. Similarly, any structure that can exert a restorative force against oscillating shaft 140 can be used in place of dampener 250, such as, for example, a jack with a spring, a rack and pinion with a piston, an indexed mounting plate with a shock absorber or even a sea anchor.”

In view of the common knowledge to the a finite number of functional equivalent restorative force elements such a spring, leaf spring, coil spring, rubber band (elastic band), In light of the knowledge gleaned by the prior art, it would have been obvious to a person having ordinary skill in the art to substitute for the spring of the Ferrara with a

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choice of a rubber band which acts in a ordinary, normal and expected manner, so as to provide an alternately constructed dampener member. Such a change would result in a more convenient and cost effective construction, in responsive to the supply and demand (of costs) of the damper components. With regards to claim 26 note that upon operation of the device, the lateral and tilt motions would inherently function in the manner recited in the claim.

Allowable Subject Matter

8. Claims 1, 5, 7, 9, 12, 14-22 are allowed.
9. Claims 27, 28, 40, and 42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
- 10.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following disclose shakers: Saffir 2175321, Meinzer 2284671 and 2255799, Funk 3813816, Miwa 477809, Parker et al 3944188, Philips 3220704 .
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 8AM-5PM, Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David R. Sample can be reached on 571-272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tony G SooHoo/
Primary Examiner, Art Unit 1797

Tony G SooHoo
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Art Unit 1797